

FILED

MAR 03 2015

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

STEPHEN HEATH BARTLE,

Plaintiff,

vs.

MIKE BATISTA, LEROY
KIRKEGARD, DAN HESS,
ROXANNE WIGERT, VERA
HOSCHIED, PAUL LUCIER,
TRACY NAPIER, CARLA
STRUTZL, HOWIE WIGERT,
ALVIN FODE, and BILLIE REICH,

Defendants.

CV 13-74-H-DWM-JTJ

ORDER

Plaintiff Stephen Heath Bartle, appearing pro se, alleges Defendants violated his Eighth Amendment rights. (Compl., Doc. 2.) Pursuant to Magistrate Judge Keith Strong's June 19, 2014 Order, (Doc. 13), Bartle filed an Amended Complaint, (Doc. 14). Judge Strong entered Findings and Recommendations recommending that Defendants Mike Batista, Leroy Kirkegard, Dan Hess, Paul Lucier, Carla Strutzl, Howie Wigert, and Billie Reich and Bartle's allegations regarding false information given to the Parole Board be dismissed. (Doc. 15.) Bartle has not filed objections to Judge Strong's Findings and Recommendations.

The court reviews findings and recommendations on nondispositive motions for clear error. 28 U.S.C. § 636(b)(1)(A); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). On dispositive motions, the parties are entitled to *de novo* review of the specified findings or recommendations to which they object, 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp.*, 656 F.2d at 1313, and where there are no objections, the court is to give the level of consideration it deems appropriate, *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings.”). This Court reviews for clear error. Clear error exists if the court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

The Court finds no clear error with Judge Strong’s determination that Defendants Batista, Kirkegard, Hess, Lucier, Strutzel, Wigert, and Reich should be dismissed because Bartle did not name them in the Amended Complaint. (*See* Doc. 14 at 3–4.) The Court also finds no clear error with Judge Strong’s determination that Bartle’s allegation that false information was provided to the Parole Board violated his Eighth Amendment rights should be dismissed because

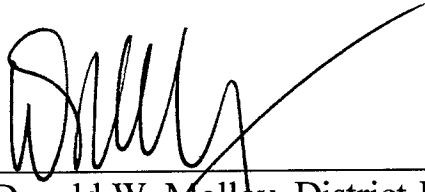
such a claim is not cognizable under § 1983. *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir. 1997).

Accordingly, IT IS ORDERED that the Findings and Recommendations (Doc. 15) are ADOPTED IN FULL.

IT IS FURTHER ORDERED that Defendants Mike Batista, Leroy Kirkegard, Dan Hess, Paul Lucier, Carla Strutzel, Howie Wigert, and Billie Reich as listed in the original complaint are DISMISSED.

IT IS FURTHER ORDERED that Bartle's Eighth Amendment claim regarding false information provided to the Parole Board is DISMISSED.

DATED this 3rd day of March, 2015.



Donald W. Molloy, District Judge
United States District Court